

6-2-2017

## State v. Crombie Appellant's Brief Dckt. 44614

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 44614
Plaintiff-Respondent,	)	
	)	BANNOCK CO. NO. CR 2012-4693
v.	)	
	)	
TROY M. CROMBIE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
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**BRIEF OF APPELLANT**

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APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BANNOCK

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HONORABLE STEPHEN S. DUNN  
District Judge

---

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## STATEMENT OF THE CASE

### Nature of the Case

Troy M. Crombie filed a motion for credit for time served, but the district court denied it. On appeal, Mr. Crombie asserts that the district court erred when it denied the motion because the district court's calculation of the number of days Mr. Crombie was incarcerated in connection with this case was incorrect due to a clerical error.

### Statement of the Facts and Course of Proceedings

Pursuant to a plea agreement, Troy M. Crombie pleaded guilty to one count of malicious injury to property in September of 2012. (R., p.98.) The district court imposed a sentence of five years, with two years fixed, but suspended the sentence and placed Mr. Crombie on probation for five years. (R., p.99.) Subsequently, Mr. Crombie admitted to violating the terms of his probation four times. (R., p.269.) After the last violation, the district court revoked probation and executed the original sentence on July 21, 2015. (R., p.269.) The district court also ordered that Mr. Crombie receive credit for the time he had served in connection to this case. (R., pp.229, 269-70.)

Subsequently, Mr. Crombie filed a motion for credit for time served in which he argued that, given his current "top out" date, his original sentence would be exceeded by 196 days. (R., pp.259-264.) The district court denied the motion. (R., pp.268-72.) It reviewed the time for which Mr. Crombie had previously been given credit and held that Mr. Crombie did not show "evidence of time served for which he had not received credit." (R., p.271.) It also wrote, "The final determination of Defendant's "top out" date is within the purview of the Idaho Department of Corrections, after taking into consideration credit for all time Defendant has served in the

Bannock County Jail, as set forth herein . . . .”<sup>1</sup> (R., p.271.) As such, it held that Mr. Crombie had served no time for which he did not receive credit. (R., p.272.) Mr. Crombie filed a notice of appeal that was timely from the district court’s order. (R., pp.274-76.)

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<sup>1</sup> The district court also addressed Mr. Crombie’s reliance on I.C. § 19-4214 (R., pp.271-72.), but that analysis is not relevant to this appeal.

### ISSUE

Did the district court err when it denied Mr. Crombie's motion for credit for time served?

## ARGUMENT

### The District Court Erred When It Denied Mr. Crombie's Motion For Credit For Time Served

Idaho Code Section 18-309 governs when credit must be given for both pre- and post-judgment incarceration:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

The Idaho Court of Appeals has explained, “[t]he directive of I.C. § 18-309 is mandatory, specifying that a person *shall* receive credit.” *State v. Horn*, 124 Idaho 849, 850 (Ct. App. 1993) (citing *Law v. Rasmussen*, 104 Idaho 455 (1983)) (emphasis in original). Similarly, the Idaho Court of Appeals has stated, “the language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or when hearing an I.C.R. 35(c) motion for credit for time served, the court give the appropriate credit . . . .” *State v. Moore*, 156 Idaho 17, 20-21 (Ct. App. 2014). “This means that the defendant is entitled to credit for all time spent incarcerated,” as defined by the statute. *Id.*

A determination as to “[w]hether the district court properly applied the law governing credit for time served is a question of law over which” appellate courts exercise free review. *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006). On appeal, the appellate court will “defer to the district court’s findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous.” *Id.*

In this case, Mr. Crombie does not challenge the district court’s holding with respect to his argument that, in light of his current “top out” date, his original sentence would be exceeded



by 196 days. (*See R.*, pp.259-264.) Instead, he challenges only the district court's calculation of the number of days for which he should have received credit. In its order denying Mr. Crombie's motion, the district court reviewed the dates Mr. Crombie had been incarcerated in connection with this case and concluded that he was entitled to "credit for 429 days in the Bannock County Jail." (*R.*, pp.269-70.) The district court's calculations appear to be correct, with the exception of the last two in the list. Regarding those, the district court wrote, "Defendant was incarcerated to participate in the retained jurisdiction program, from December 24, 2013, until April 28, 2014, 127 days." (*R.*, p.270.) This appears to be off by one day and should actually be 126 days. And, with respect to the time Mr. Crombie was incarcerated in 2015, the district court wrote, "Defendant was arrested for violation of probation on April 20, 2015, and remained in custody until disposition on July 20, 2015, 30 days." (*R.*, p.270.) This is a clerical error also. The correct number of days between these dates is 92, not 30. As such, the total number of days for which Mr. Crombie was entitled to credit was 490, not 429 as the district court held.

Mr. Crombie acknowledges that he did not address this specific issue in his motion for credit for time served. However, the district court addressed the issue when it reviewed the relevant dates of his incarceration. Thus, this Court can address it. Also, in the interest of judicial efficiency, and given the mandatory nature of I.C. § 18-309, Mr. Crombie argues that this Court should remand this case, so the district court can correct this error and give him the proper credit for time he has served in connection to this case.

CONCLUSION

Mr. Crombie respectfully requests that this Court reverse the district court's order denying his motion for credit for time served and remand this case for further proceedings.

DATED this 2<sup>nd</sup> day of June, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TROY M CROMBIE  
629 N HARRISON  
POCATELLO ID 83204

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DISTRICT COURT JUDGE  
E-MAILED BRIEF

RANDALL D SCHULTHIES  
BANNOCK COUNTY PUBLIC DEFENDER  
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CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

RPA/eas